92-1975

Supreme Court, U.S.
FILED
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIE AND BETTY CANNON AS
EXECUTOR AND ADMINISTRATRIX OF THE
ESTATE OF ROMAN CANNON,

Petitioner

versus

CEDRIC LaFLEUR, RANDY BADEAUX,
ST. MARY'S PARISH, THE CITY OF MORGAN
CITY AND DR. EVARISTE J. TRAHAN,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

Following six (6) days of detention in the Morgan City Jail, Roman Cannon was found dead in his isolation cell. The District Court granted the defendants' motion for summary judgment. Was this in error in light of:

(1) The evidence that the deceased was mentally disturbed, had a history of prior confinement for mental disorders and the repeated requests of his family, the deceased received no medical or psychiatric care for the six days he was imprisoned; and

(2) The evidence from the prisoner's mother that he had told her he had been physically beaten by jail keepers?

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REPORTED CASES

The District Court's and Court of Appeals' decisions in this case have not been published.

STATEMENT OF JURISDICTION

The jurisdiction of the Supreme Court was invoked pursuant to 28 U.S.C. § 1254, as an appeal from a final judgment entered on January 22, 1993, by the United States Court of Appeals for the Fifth Circuit on the respondents' motions for summary judgment.

STATUTES AND FEDERAL RULES

Fed. R. Civ. P., Rule 56. Summary Judgment.

(c) Motion for Proceedings Thereon.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

28 U.S.C. § 1254. Courts of appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any civil or criminal case, before or after rendition of judgment or decree,

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require entire record to sent up for decision of the entire matter in controversy.

28 U.S.C. § 1291. Final decisions of district courts.

The courts of appeals (other than the United states Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

42 U.S.C. § 1983. Civil action for the deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1988. Proceedings in vindication of civil rights; attorney's fees; expert fees.

(a) Applicability of statutory and common law.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of the Title "CIVIL RIGHTS," and of the Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

STATEMENT OF THE CASE

A. Procedural Disposition

The appellants are the natural parents of the deceased, who in their capacity as Executor and Administratrix of the estate of their son, Roman Cannon, commenced this proceeding on September 25, 1989, in the United States District Court for the Eastern District of Louisiana under 42 U.S.C §§ 1983 and 1988. Named as defendants were Cedric LaFleur in his capacity as the Mayor of the City of Morgan City, Randy Badeaux, in his capacity of Chief of Police of Morgan City, St. Mary's Parish, the City of Morgan City, Dr. Evariste J. Trahan as Coroner and John Doe, individually, and in his capacity as a police officer for Morgan City.

The defendants filed a joint motion

to dismiss for lack of proper venue on April 12, 1990, and pursuant thereto, an order was entered on April 23, 1990, by Judge Robert F. Collins, transferring the proceeding to the United States District Court for the Western District of Louisiana.

A status conference was held on January 22, 1992, before Judge Rebecca F. Doherty to schedule a trial date, and other cutoff dates.

Pursuant thereto, the plaintiff filed a motion to reinstate the jury, which was waived pursuant to a preliminary default filed in the United States District Court for the Eastern District of Louisiana. Pursuant to a motion to reinstate the jury filed by the plaintiffs, Judge Doherty entered such an order on March 6, 1992.

On March 31, 1992, the defendant, St. Mary Parish, filed a motion for summary judgment, and on April 1, 1992, the remaining defendants filed a motion for summary judgment. Following the submission of memoranda on May 26, 1992, Judge Doherty entered a judgment granting the defendants' motions for summary judgment, and dismissing with prejudice the appellants claim in its entirety.

On June 22, 1992, the plaintiffs filed a timely notice of appeal to the United States Court of Appeal for the Fifth Circuit
from the judgment rendered by the District Court on May 26, 1992. On January 22, 1993, the Court of Appeal rendered a decision affirming the District Court judgment.

The jurisdiction of the Supreme

Court was invoked pursuant to 28 U.S.C. § 1254, as an appeal from a final judgment entered on January 22, 1993, by the United States Court of Appeals for the Fifth Circuit affirming the District Court's decision granting the respondents' motions for summary judgment.

B. Statement of the Facts

The deceased was arrested by Officer Hilda White of the Morgan City Police Department on December 16, 1988. He was charged with "disturbing the peace" and public intoxication, and confined in the Morgan City Jail to await his first appearance before a Magistrate.

Through Friday evening, December 16, 1988, all day Saturday, and into Sunday morning, the prisoner was kept in a holding cell (the "bullpen"). On Sunday morning, because of his loud,

unruly behavior, he was placed in a padded, solitary cell. Because of his continuing hostile demeanor, jailer Dewey called Dr. Trahan to examine the prisoner. At approximately 8:00 a.m. Sunday morning, December 18, 1988, Dr. Trahan arrived to evaluate the prisoner, but he did not conduct the examination for reasons that are not clear. The prisoner continued with his loud behavior throughout Saturday, December 17, 1988, through that evening and into Sunday, December 18, 1988. Dr. Trahan attempted to visit the prisoner again on the morning of December 18, 1988, but due to the deceased's verbal obscenities and alleged threats, he did not examine or treat Mr. Cannon, nor did he secure any other sedatives or other medications for the prisoner. On Sunday, December 18, 1988,

Roman's father, Willie Cannon, advised Dr. Trahan that his son had been previously confined for a mental disorder in the Central Louisiana Hospital in Pineville, Louisiana. Willie Cannon also told Dr. Trahan that his son had been placed in a health unit in Houma, Louisiana.

On Monday and Tuesday, December 19th and 20th, 1988, the prisoner's belligerent behavior continued. Captain James Fields directed jailer Dewey to call Dr. Trahan to come in and check on the prisoner, however, Dr. Trahan did not come in on that day; he did come in the following day, Tuesday, and told the Cannons that he would attempt to call the Pineville Mental Institution the next morning to see if they could accept Roman Cannon as a patient. On several

occasions, Mr. and Mrs. Cannon called medical facilities directly in an effort to find suitable mental treatment/ confinement for their son, but to no avail.

Throughout this period of incarceration, the deceased was confined in a small, padded isolation cell. There is no evidence that he received any medication, injection or treatment by Dr. Trahan, or any other physician or medical care specialist. Indeed, both the statements of the various jailers, and the deposition testimony of Mr. and Mrs. Cannon indicate that is was they, and not the officials of the Morgan City Police Department/ Jail, who made the most effort to obtain medical care and treatment for their son prior to his death.

On Wednesday afternoon, December 21, 1988, Dr. Trahan was finally scheduled to administer medication to the prisoner. However, this was not done prior to Roman Cannon being found dead in his jail cell later that evening at approximately 11:55 p.m., five (5) days after his arrest for a misdemeanor. Willie Cannon was in the jail every day from Sunday, December 18, 1988 until his son's death. He testified that Dr. Trahan never did examine or treat ("check out") his son prior to his death.

On, Thursday, December 22, 1988, Dr. Trahan performed an autopsy, and listed the cause of death as "acute hemorrhagic pancreatitis," which was later changed to "generalized peritonitis due to ruptured duodenal ulcer." No toxicology studies were ordered to

confirm the presence of any drugs in the body.

BEST AVA

ARGUMENT

Following six (6) days of detention in the Morgan City Jail, Roman Cannon was found dead in his isolation cell. The District Court granted the defendants' motion for summary judgment. Was this in error in light of:

(1) The evidence that the deceased was mentally disturbed, had a history of prior confinement for mental disorders and the repeated requests of his family, the deceased received no medical or psychiatric care for the six days he was imprisoned; and

(2) The evidence from the prisoner's mother that he had told her he had been physically beaten by jail keepers?

A. The Standards for Summary Judgment

Rule 56(c) of the Federal Rules of

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Civil Procedure expresses the criteria which must be satisfied before a motion for summary judgment will be granted:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

The Court has stated that the mover must carry an "exacting" burden before he can prevail; Adickes v. S.H. Kress and Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970).

Indeed, the Fifth Circuit Court in the case of Impossible Elec. Tech. v. Wackenhut Prot. Systems, 669 F.2d 1026 (1982) has echoed the analysis in defining the parameters of the Court's role in considering a motion for summary judgment:

> The party seeking summary judgment bears the exacting burden of demonstrating that there is no actual dispute as to any material fact in the case. Adickes v. S.H. Kress and Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970); Environmental Defense Fund v. Marsh, 651 F.2d at 990-91. In assessing whether the movant has met this burden the courts should view the evidence introduced in the light most favorable to the party opposing the motion. Id. All reasonable doubts about the facts should be resolved in favor of the non-moving litigant. Casey Enterprises v. American Hardware Mutual Insurance Co., 655 F.2d at 602. A court must not decide any factual issues it finds in the record, but if such are present, the court must deny the motion and proceed to trial. Environmental Defense Fund v. Marsh, 651 F.2d at 991; Lighting Fixture & Electric Supply Co. v. Continental Insurance Co., 420 F.2d 1211, 1213 (5th Cir. 1969). Id., p. 1031.

The appellants submit that many aspects of Roman Cannon's confinement and subsequent death clothe the entire situation with numerous unresolved

factual issues, issues which render the Court's ruling below erroneous; among them:

(1) Why couldn't Dr. Trahan or the jail authorities sedate the prisoner in order to render a medical examination, and provide him with the treatment he may have needed?

(2) Why couldn't the jail authorities transport the prisoner to the South Louisiana Medical Center or another medical facility for emergency examination and/or treatment?

(3) Why did Doctor Trahan only attempt to see the prisoner once, perhaps two occasions, despite the father's urgent request for medical assistance?

(4) Why wasn't another physician or psychiatrist brought in as the father repeatedly requested?

(5) Was the prisoner physically beaten by his jailers prior to his death, and if so, when, how often, how severely and by whom?

B. Failure to Provide Medical Care

Dr. Trahan "attempted" to see the prisoner on Saturday, December 17, 1989, and perhaps again on Sunday, the 18th;

according to the defendants, he did not get near Roman Cannon, because of his "wild, psychotic behavior." Even assuming, for the purposes of this inquiry, that the deceased was too hostile to be approached or subdued, does this automatically relieve the defendants of their constitutional, legal obligation to provide a prisoner (he was in obvious distress) with proper medical care? Would not Mr. Cannon's behavior make it even more imperative that he be examined for a physical or mental ailment?

The typewritten statements of the prison officials attached to the internal investigating report indicates that no other physician was summoned to see the prisoner. Why couldn't a psychiatrist be brought in by Dr. Trahan or the jailers to administer medication to calm him

down? The prisoner did have a history of psychiatric treatment, and this was made known to Dr. Trahan by the prisoner's father. Does the duty, indeed, the mandate, to provide prisoners with proper medical care, cease at the doorstep of patient hostility?

Another medical facility, the South Louisiana Medical Center in Houma, Louisiana, was barely thirty minutes away. Why wasn't the prisoner transported to the Louisiana Medical Center if his behavior was so extreme? Police and jail officials transport prisoners routinely; surely a vehicle could have been acquired to ferry Cannon to the local Charity Hospital on an emergency basis. At the outset we would note that Roman Cannon was a pre-trial detainee, not a convicted prisoner, hence, an

evaluation of his rights and the deprivation thereof must be considered under the provisions of the Due Process Clause, rather than the Eighth Amendment; Bell v. Wolfish, 441 U.S. 520, 537, 99 S.Ct. 1861, 1873, 60 L.Ed. 2d 477 (1979).

It has been settled that an incarcerating authority has a constitutional obligation to provide prisoners with medical care, and that a violation of this duty is actionable under federal law. These principles were articulated in the landmark Supreme Court decision of Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). The Court, in an 8-1 majority, speaking through Justice Marshall, eloquently stated:

> These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An

> inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worse cases, such a failure may actually produce physical "torture or a lingering death," (Citations omitted), the evils of most immediate concern to the drafter of the amendment. 97 S.Ct. at 290.

The High Court further stated that the deliberate indifference to the needs of prisoners constitutes the "unnecessary and wanton infliction of pain." Estelle, 97 S.Ct. at 291, quoting Gregg v. Georgia, 428 U.S. 153, 182-183, 96 S.Ct. 2909, 2925 (1976). Further expressing this concept, the Estelle majority continued:

> This is true whether the indifference is manifested by prison doctors in response to the prisoner's needs, or by prison guards in intentionally denying or delaying access to medical care, or intentionally interfering with the treatment

> once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983. (Emphasis supplied); 97 S.Ct. at 291.

The District Court stated that the actual fault must be demonstrated, which is "either an unconstitutional policy or custom, or the unconstitutional implementation of a valid policy or custom." Several federal appellate decisions have clarified these concepts when considering motions for summary judgment filed in response to § 1983 suits.

In Waldrop v. Evans, 871 F.2d 1030 (11th Cir. 1989) the parents of a prisoner sued a variety of prison officials alleging the violation of their son's constitutional rights. In affirming the District Court's denial of the

defendant's motion for summary judgment, the Eleventh Circuit stated:

> Grossly incompetent or inadequate care can constitute deliberate indifference (Citations omitted), as can a doctor's decision to take an easier and less efficacious course of treatment. Failure to respond to a known medical problem can also constitute deliberate indifference. (Citations omitted). Emphasis supplied, Id., p. 1033.

In assessing the merits of the claim the Waldrop Court noted that the particular inmate there, who had a history of psychiatric problems, had actually been examined on several occasions by a psychiatrist.

The constitutional principles espoused by the Court in Waldrop are equally applicable in our situation, though the facts are even more compelling: Roman Cannon never received

medical attention during his incarceration in the Morgan City Jail despite his history of psychiatric care, and his parents repeated requests.

Another Court came even more directly to grips with the use of a summary judgment in a § 1983 action. In the case of Jones v. the City of Chicago, 787 F.2d 200 (7th Cir. 1986) the Court stated:

> To defeat the City's summary judgment motion, it was incumbent upon appellants to show that they would produce "specific facts" at trial which could establish a deliberate indifference to their constitutional rights or tacit authorization of the employee misconduct. (Citation omitted). It is enough that appellants offer circumstantial evidence from which a trier of fact may reasonably infer the City's culpability. Id., p. 205.

Turning again to the instant situation, jailer Dewey felt as early as

Saturday, December 17, 1988, that the prisoner was suffering from some kind of mental disorder:

> After placing Roman Cannon in the bullpen, I went to the padded cell to make a cell check on Ricky Turner. Mr. Turner, who <u>also appeared to have a mental problem</u> was talking straight talk to me, and appeared to be alright. (Sic) Emphasis supplied.

This opinion was also shared by jailer Ronnie Morgan, who, after placing Cannon in the padded cell on the 17th, noted on the inmate's medical record admission form that Cannon "appeared to have a mental disorder."

A new prisoner with a history of mental disorders exhibiting this kind of loud, psychotic-like behavior should have warranted immediate intervention by a medical professional. Cannon did not have a record of past criminal activity,

and was arrested for disturbing the peace, not a violent crime.

The circumstance of Roman Cannon's confinement, and the City's failure to obtain and provide medical attention that may have saved his life, constitute specific facts which at trial, could establish, on the part of the appellees, a pattern of deliberate indifference to his needs. Defendants will not, indeed, cannot, dispute the facts that Mr. Cannon: (1) did not receive treatment by a physician during the time that he was confined the Morgan City Jail; (2) had a history of psychiatric problems; (3) was acting hostile, belligerent and loud; (4) that his parents requested medical attention for their son; and (5) was found dead in his cell on December 22, 1989, due to an ailment which could

have been diagnosed and successfully treated:

> It is my professional, medical opinion that the condition identified as the cause of death, namely, generalized peritonitis due to a ruptured duodenal ulcer, could have been successfully treated with immediate medical attention which would have prevented Mr. Cannon's death on December 21, 1988.

These established facts, even if the appellees disagree as to the inferences that can be drawn from these facts, should have resulted in a denial of their motions for summary judgment; Lighting Fixture & Electric Co. v. Continental Insurance Co., 420 F.2d 1211, 1213 (5th Cir. 1969). The appellees' failure to provide the deceased with the medical care he so desperately needed compels a reversal of the lower court decisions.

The Court of Appeals ruling notes that the Cannons "failed to identify what specific municipal policy or custom was implicated in their suit." However, this Court has stated that denying or even delaying a prisoner's access to medical care can be evidence of "deliberate indifference," and hence, constitute a valid claim under 42 U.S.C. § 1983, and the violation of the Eighth Amendment; Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976).

C. The Evidence of Physical Abuse

Quite aside from the appellees failure to provide the deceased with the proper medical attention, it has been established that prison administrators are charged with the obligation to take reasonable measures to guarantee the safety of the inmates; Hudson v. Palmer,

468 U.S. 517, 126-27, 104 S.Ct. 3194, 3200, 82 L.Ed.2d 393 (1984). The possibility that the prisoner was beaten while he was confined in the Morgan City Jail brings into serious question whether or not the defendants took reasonable steps to provide for his safety:

> Q. Do you remember anything else the Sunday?
>
> A. He just kept saying, "Mamma, get me out. Get me out. They dogging me out. They beat me from the beginning."
>
> Q. Did he tell you how they beat him?
>
> A. No. He said, "They beat me, Mamma. They beat me."
>
> Q. With their hands, or with sticks, or what?
>
> A. He didn't tell me with sticks. He said that they beat him. They beat him and tore his clothes. They beat him. "You know they're beating me, Mamma? They tore my clothes, Mamma."
> (Deposition of Betty Cannon)

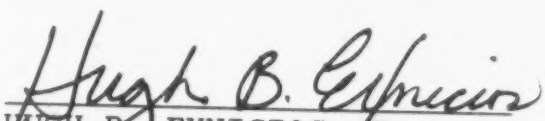
The physical abuse of prisoners by their keepers without cause or provocation is actionable under the Civil Rights Act; Collins v. Hldaky, 603 F.2d 824 (10th Cir. 1979); Tolbert v. Bragan, 451 F.2d 1020 (5th Cir. 1971). Indeed, given the custodial control of the inmate that a prison naturally has, any evidence of beating, could, as a matter of course, raise factual issues as to culpability of the prison officials in either (1) participating in such reprehensible activity; or (2) failing to take steps to protect the prisoner, who is literally, at their mercy. Such evidence - in the context of a prison setting - justifies the denial of a motion for summary judgment in favor of a trial on the merits in order to fully explore whether the beating establishes a

pattern of deliberate indifference on the part of correctional authorities; Harris v. Maynard, 843 F.2d 414 (10th Cir. 1988); Martinez v. Rosado, 614 F.2d 829 (2nd Cir. 1980); Tolbert v. Bragan, supra.; Moriani v. Hunter, 462 F.Supp. 353 (S.D.N.Y. 1978).

The issue as to whether Roman Cannon was beaten, by whom, when and whether or not it could be stopped raises fundamental issues as to whether the prison authorities evidenced a "deliberate indifference" to his confinement and care, therefore justifying an adjudication on the merits of this claim.

All of which is respectfully submitted.

EXNICIOS LEGAL CENTER



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APPENDIX

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Memorandum Ruling and Judgment of the U.S.D.C., W.D., La., No. CV90-0742

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Judgment of the Court of Appeal
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APPENDIX "A"

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

WILLIE CANNON, ET AL. CV90-0742

VERSUS JUDGE DOHERTY

CEDRICK LAFLEUR, ET AL. MAGISTRATE JUDGE TYNES

MEMORANDUM RULING

The four remaining defendants in this § 1983 action have moved for summary judgment to dismiss the plaintiffs' claims. Plaintiffs are the parents and administrators of the estate of Roman Cannon ("Cannon") who died while being held in the Morgan City jail following his arrest. They have sued Cedrick Lafleur ("Lafleur") in his capacity as Mayor of Morgan City, Randy Badeaux ("Badeaux") in his capacity as Chief of

Police of Morgan City, the City of Morgan City, and the Parish of St. Mary.[1]

Factual Summary

Cannon was arrested on December 16, 1988 by the Morgan City police department for disturbing the peace while intoxicated. He was booked into the parish jail, and, according to the arrest report, bond was set at $77.50. Cannon was in an extremely agitated state, apparently because of drug use and was eventually placed in a padded cell for his protection. Dr. Trahan, the parish coroner and the jail physician, attempted to examine Cannon on December 17 and 18th but Cannon refused to permit examination. Dr. Trahan attempted to have him placed

[1]The only two other defendants, a "John Doe" defendant and Dr. Evariste Trahan, the parish coroner who treated Cannon, have been dismissed.

in a mental hospital, but no beds were then available. Dr. Trahan made some effort to obtain a drug which would relieve Cannon's drug induced condition, but Cannon died on December 21, 1988 before that drug could be administered. Dr. Trahan's autopsy report states that Cannon died of peritonitis due to a ruptured duodenal ulcer. Trahan stated in his report that the usual symptoms of the condition were masked by Cannon's mental condition.

Plaintiffs make the following allegations as to the remaining defendants:

1) Lafleur, as mayor, is responsible for the overall training and conduct of the Police Department, and for enforcing the regulations of that department and ensuring that the officers

obey state and federal laws, and that he failed to provide training and supervision for the "lawful use of any officer's service which amounts to gross negligence and deliberate indifference to the safety and lives of citizens of the City of Morgan City."

2) Badeaux, as police chief, was the commanding officer of the John Doe defendant (since dismissed) and was responsible for the training, supervision and conduct of the defendant police officers, and for enforcing departmental regulations as well as state and federal laws.

3) The City and the Parish of St. Mary employed Badeaux, Trahan and Doe, and Lafleur and that each municipal body "had no reason for not setting a bond so the defendant could be released."

4) Unknown officers beat Cannon in violation of his civil rights; Cannon was entitled to be released on bond, but none was set, which bond could have permitted Cannon to leave the jail and obtain proper medical assistance; and that Dr. Trahan failed to examine Cannon and failed to render proper medical assistance.

Defendants urge dismissal because of the failure of plaintiffs to allege, and more importantly, to obtain evidence, that there is any liability on their part except traditional respondeat superior liability, which is insufficient in § 1983 cases.

Legal Analysis

The proposition that municipalities have no respondeat superior liability for violations of § 1983 is so well-

established it requires no lengthy citation to authority. This principle has been entrenched since Monell v. Department of Social Services, 436 U.S. 658 (1978). Yet, because a municipality can only act through its officers and employees, this rule must have some limit or it would result in absolute immunity.

That limit, as to allegations regarding inadequate training (and supervision), was described in City of Canton v. Harris, 109 S.Ct. 1197 (1989). The Court said that a municipality may face § 1983 liability if it exhibits a "deliberately indifferent" training policy which is shown to be a direct cause of the violation of the plaintiff's federally protected rights. "We hold... that the inadequacy of police training may serve as the basis for § 1893

liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Id. at 1204.

Plaintiffs' theory of liability, based upon the pleadings described above, must rest exclusively on its theory of inadequate training or supervision since the simple fact that either the City or the Parish employed people who may have committed § 1983 violations cannot result in liability to the City or Parish. Nor would the fact that Lafleur was the mayor or Badeaux the chief of police who supervised such employees result, without more, in liability. Monell teaches that some actual fault must be attributable to the municipality and its executives before § 1983 liability can be found.

That "actual fault" is either an

unconstitutional policy or custom or the unconstitutional implementation of a valid policy or custom. It requires, according to City of Canton, (1) a deliberately indifferent policy of training that was (2) the proximate cause of the violation of plaintiff's federally protected rights. In addition, this policy of indifference, or deficiency, must be identified. This same standard has also been held applicable to allegations of failure of supervision. See, e.g., D.T. v. Independent School District No. 1, 894 F.2d 1176 (10th Cir.), cert. denied, 111 S.Ct. 213 (1990); Leach v. Shelby County Sheriff, 891 F.2d 1241 (6th Cir. 1989); Bordanaro v. McLeod, 871 F.2d 1151 (1st Cir.) cert. denied, 110 S.Ct. 75, (1989) and Davis v. City of Ellensburg, 869 F.2d

1230 (9th Cir. 1989).

Having set forth the burden plaintiffs must carry in order to prevail, we now review the evidence and argument to determine whether defendants have successfully met its burden of showing there are no genuine issues of fact and its entitlement to judgment as a matter of law. If so, the burden shifts to plaintiffs to come forward with evidence which raises a genuine issue of material fact which precludes summary judgment. Plaintiffs may not rest on their allegations, but must set forth specific facts showing a genuine issue for trial. F.R.C.P. 56. The nonmovants must adduce affirmative evidence and create a fact issue concerning every component of their case. Dunn v. State Farm Fire & Cas. Co., 927 F.2d 869 (5th

Cir. 1991). They need not prove their case absolutely, but must produce evidence that could support a jury verdict. Anderson v. Liberty Lobby, 477 U.S. 242, 252 (1986).

Defendants have come forward with evidence that bond was set at $77.50, that Dr. Trahan attempted to examine Cannon, but Cannon refused to allow the examination, and that Cannon was not beaten. As importantly, defendants have demonstrated that plaintiffs have failed to articulate the policies that are alleged to have violated with deliberate indifference, or that any violations were more than the acts of individual employees.[2] In short, defendants have

[2]Defendants also contend that Dr. Trahan was not an employee or under their supervision at the time of the challenged acts. However, the Court need not reach this issue.

met their burden of establishing their entitlement to judgment as a matter of law, unless plaintiffs come forward with specific facts which create an issue as to defendants' direct liability.

Plaintiffs, in response, offer excerpts of the deposition testimony they gave in their medical malpractice action against Dr. Trahan, as well as the affidavit of Dr. James Elston. Dr. Elston states that Cannon's death could have been prevented with timely treatment. The deposition testimony is generally as follows:

-- Cannon was treated in the late 1970's for mental illness and pronounced well.

-- Cannon's father was told there was no space available in the mental hospital, and that Dr. Trahan never

examined his son.

-- Cannon was seen on Sunday by his mother in a cell without his clothes on, and she was told the problem would be fixed by the jailer.

-- Cannon told his mother the jailers tore his clothes off.

-- Cannon's mother thought he did not look well, and Cannon complained to her of being beaten. She saw no evidence of a beating.

The evidence presented by plaintiffs is sufficient to raise an issue of fact as to the claim Cannon was beaten, but it is not sufficient to permit a claim against <u>these defendants</u> to go forward. Plaintiffs have offered no evidence regarding the training or supervision of any of the defendants, or

that the beatings were the result of any failure in training or supervision.[3]

Dr. Trahan's failure to examine Cannon, even if it is assumed to be negligence, and even more, a constitutional deprivation of his right to treatment, is not attributable to any defendant based upon the evidence presented by the parties.

Plaintiffs have come forward with no evidence that creates an issue of fact as to the requirement that an identified policy of indifference to training or supervision caused any of the harms of which plaintiffs complain. Accordingly, defendants are entitled to summary judgment and plaintiffs complaint against the remaining defendants are DISMISSED

[3]We assume for the purposes of this motion that cannon was beaten.

with prejudice.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

WILLIE CANNON, ET AL. CV90-0742

VERSUS JUDGE DOHERTY

CEDRICK LAFLEUR, ET AL. MAGISTRATE JUDGE TYNES

JUDGMENT

For the reasons set forth in the accompanying memorandum ruling, defendants' motion for summary judgment is hereby GRANTED and it is hereby

ADJUDGED, ORDERED, AND DECREED that plaintiff's complaint against Cedrick Lafleur in his capacity as Mayor of Morgan City, Randy Badeaux in his capacity as Chief of Police of Morgan City, the City of Morgan City, and the Parish of St. Mary is DISMISSED with prejudice and this action is therefore

__DISMISSED in its entirety.

Thus done and signed this ____ day of May 1992 at Lafayette, Louisiana.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4675
Conference Calendar

WILLIE and BETTY CANNON,
as Executor and Administratrix
of the Estate of their son,
Plaintiff-Appellants,

versus

CEDRICK LEFLEUR, Etc., ET AL.,
CEDRICK LEFLEUR, Etc., RANDY
BADEAUX, Etc., ST. MARY PARISH,
and the CITY OF MORGAN CITY,
Defendants-Appellees

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Appeal from the United States
District Court for the Western
District of Louisiana

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Before GARWOOD, SMITH, AND EMILIO M. GARZA, Circuit Judges.

*

PER CURIAM:

Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes

Willie and Betty Cannon, as executor and as administratrix of the estate of their son, appeal the district court's grant of summary judgment in favor of the defendants. The lawsuit arose under 42 U.S.C. § 1983 over the events surrounding their son's death. "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.)

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needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

(footnote omitted), cert. denied, 113 S.Ct. 462 (1992).

"In a § 1983 action, a municipality may not be held strictly liable for the acts of its non-policy-making employees under a respondeat superior theory." Benavides v. County of Wilson, 955 F.2d 968, 972 (5th Cir.) cert. denied, 113 S.Ct. 79 (1992). "Local governing bodies may be liable under § 1983, however, where the alleged unconstitutional activity is inflicted pursuant to official policy." Johnson v. Moore, 958 F.2d 92, 93 (5th Cir. 1992). "Official policy" is defined as:

> 1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or
> 2. A persistent, widespread

> practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy.

Johnson, 958 F.2d at 94. "A § 1983 plaintiff must plead specific facts with sufficient particularity to meet all the elements of recovery. This heightened pleading requirement applies to allegations of municipal custom or policy." Fraire, 957 F.2d at 1278 (footnote omitted).

In the district court, the Cannons failed to identify what specific municipal policy or custom was implicated in their suit. They make no argument and they allege no facts on appeal that would tend to show a municipal policy or custom that caused their son's death. The burden is on the non-moving party to set

forth specific facts showing a genuine issue of material fact for trial. Id. at 1273.

In the district court, the Cannons raised the issue whether their son was beaten by the police. "Allegations of an isolated incident are not sufficient to show the existence of a custom or policy." Id. at 1278. To defeat a summary judgment, the § 1983 "plaintiff must at least allege 'a pattern of similar incidents in which citizens were injured or endangered....'" Id. (footnote omitted). By failing to demonstrate a pattern of police abuse, the Cannons have not raised a genuine issue as to a material fact. See Benavides, 955 F.2d at 970.

AFFIRMED.